

## Rough Transcript

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1 WOMACK ROUGH DRAFT

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6 Rough draft of Clyde Womack, 1/22/2013.

08:09

08:09

9 VIDEOGRAPHER: This tape one in the 09:04  
10 video deposition of Clyde Womack. Today is 09:05  
11 Tuesday, January 22nd, 2013. We're now on 09:05  
12 record at approximately 9:04 a.m. Will the 09:05  
13 attorneys please introduce themselves for 09:05  
14 the record. 09:05

15 MR. LEE: Randall Lee and Jessica 09:05  
16 Kurzban from WilmerHale for defendants 09:05  
17 Larry Goldstone and Clay Simmons. We're 09:05  
18 joined on the phone today by Daniel Crump. 09:05

19 MR. MARKS: Jerry marks from Milbank 09:05  
20 Tweed for Jane Starrett.

21 MR. McKENNA: Steve McKenna on 09:05  
22 behalf of the plaintiffs, Securities and 09:05  
23 Exchange Commission. 09:05

24 MR. SALTER: George Salter from 09:05  
25 Hogan Lovells. I'm joined by my colleague 09:05

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<p>1 WOMACK ROUGH DRAFT</p> <p>2 you know we can deal with this if it 05:36</p> <p>3 becomes a problem, but we're not agreeing 05:36</p> <p>4 to more than 7 hours. 05:36</p> <p>5 MR. McKENNA: 05:36</p> <p>6 Q. Good afternoon Mr. Womack I know it 05:36</p> <p>7 has been a long day so will try to keep this as 05:36</p> <p>8 brief and succinct as can I? 05:36</p> <p>9 A. My name is Steve McKenna I represent 05:36</p> <p>10 the plaintiff the securitys and exchange 05:36</p> <p>11 commission in this litigation. And I just want 05:36</p> <p>12 to start out by asking you a few questions in 05:36</p> <p>13 general about your audit experience of which 05:36</p> <p>14 you have had over 40 years; is that correct. 05:36</p> <p>15 A. 42 years. 05:36</p> <p>16 Q. And in your experience, who is 05:36</p> <p>17 responsibility are the familiar statements in 05:36</p> <p>18 the Form 10-K? 05:37</p> <p>19 A. The client. 05:37</p> <p>20 Q. In the case of the company we're 05:37</p> <p>21 discussing been discussing today who would that 05:37</p> <p>22 be? 05:37</p> <p>23 A. Thornburg. 05:37</p> <p>24 Q. And how about the, the general 05:37</p> <p>25 statements in a Form 10-K for instance the 05:37</p>	<p>1 WOMACK ROUGH DRAFT</p> <p>2 management discussion and the analysis who is 05:37</p> <p>3 responsibility are the statements made there? 05:37</p> <p>4 A. The client. 05:37</p> <p>5 Q. And as far as a decision to issue a 05:37</p> <p>6 restatement ultimately, whose decision is that? 05:37</p> <p>7 A. Well, it would be something that 05:37</p> <p>8 would just be discussed is between the client 05:37</p> <p>9 and the auditor and it would normally be the 05:37</p> <p>10 usually the client if they understood the 05:37</p> <p>11 situation would agree to the restatement decide 05:38</p> <p>12 that is what is appropriate, but the auditor 05:38</p> <p>13 would always have that ability to hold that 05:38</p> <p>14 over them if they wouldn't if they didn't 05:38</p> <p>15 restate it they would not issue their opinion. 05:38</p> <p>16 Q. So, so the auditor can't actually 05:38</p> <p>17 force a restatement is that is that correct? 05:38</p> <p>18 A. Yes. 05:38</p> <p>19 Q. All it can do is say that if you 05:38</p> <p>20 don't restate, I will pull my audit opinion? 05:38</p> <p>21 A. That's correct. 05:38</p> <p>22 Q. So ultimately is it the company that 05:38</p> <p>23 makings the decision of whether to restate or 05:38</p> <p>24 not? 05:38</p> <p>25 A. Well, I guess you could say 05:38</p>
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<p>1 WOMACK ROUGH DRAFT</p> <p>2 ultimately it is the auditor that has the power 05:38</p> <p>3 over this the decision to restate but company 05:38</p> <p>4 it is it the company, the company's financial 05:38</p> <p>5 statements so they, they would be, they would 05:38</p> <p>6 be an agreement that that is what needs to be 05:39</p> <p>7 done under normal circumstances. 05:39</p> <p>8 Q. Who signs off on a restatement who 05:39</p> <p>9 signs off on the accuracy of that document? 05:39</p> <p>10 A. From the firm stand point or. 05:39</p> <p>11 Q. Yes. 05:39</p> <p>12 A. It would be the engagement team and 05:39</p> <p>13 then their procedures in place where we would 05:39</p> <p>14 have to have the appropriate reviews in their 05:39</p> <p>15 department of professional practice to make 05:39</p> <p>16 sure that we've done all of the documentation 05:39</p> <p>17 and approvals that are necessary. 05:39</p> <p>18 Q. And with the restatement is the 05:39</p> <p>19 management of the company responsible for sign 05:39</p> <p>20 suggest off on the accuracy of the financial 05:39</p> <p>21 statements in that restatement? 05:39</p> <p>22 A. No, they're still their financial 05:39</p> <p>23 statements and yes, they, they have to continue 05:39</p> <p>24 the ownership of their own financial 05:39</p> <p>25 statements. 05:39</p>	<p>1 WOMACK ROUGH DRAFT</p> <p>2 Q. And are they required to actually 05:39</p> <p>3 sign-off on the accuracy of those statements? 05:39</p> <p>4 A. Well, they would do so by filing 05:39</p> <p>5 being filing of the restatement. 05:40</p> <p>6 Q. And I want to ask you to turn to the 05:40</p> <p>7 margin calls that Thornburg received in the 05:40</p> <p>8 last 2 weeks of February of 2008. You 05:40</p> <p>9 testified about those at some 11th today. Is 05:40</p> <p>10 it your understanding that Thornburg was not 05:40</p> <p>11 timely meeting those margin calls in the last 2 05:40</p> <p>12 weeks of February, 2008? 05:40</p> <p>13 MR. SALTER: At what time period are 05:40</p> <p>14 you asking about his knowledge? 05:40</p> <p>15 Q. As you sit here today? 05:40</p> <p>16 A. As I sit here today with information 05:40</p> <p>17 I have now. 05:40</p> <p>18 Q. Yes? 05:40</p> <p>19 A. Yes that is correct. 05:40</p> <p>20 Q. And if I were to represent to you 05:40</p> <p>21 that the fact that if you had been able to look 05:40</p> <p>22 at some of these reverse re purchase agreements 05:40</p> <p>23 for margin calls that Thornburg was not 05:40</p> <p>24 meeting, that the failure to meet those margin 05:40</p> <p>25 calls when made or within 24 hours or shortly 05:40</p>

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<p>1 WOMACK ROUGH DRAFT</p> <p>2 after that time period of when they were made 05:41</p> <p>3 gave the lender the right to declare an event 05:41</p> <p>4 of default and then immediately without any 05:41</p> <p>5 further action sell the collateral that it held 05:41</p> <p>6 as security on its loans are you following me? 05:41</p> <p>7 A. Yes. 05:41</p> <p>8 Q. Would that have been important for 05:41</p> <p>9 Thornburg's engagement's team to know in 05:41</p> <p>10 connection with its audit? 05:41</p> <p>11 MR. LEE: Objection to form. 05:41</p> <p>12 A. Yes. 05:41</p> <p>13 Q. Why? 05:41</p> <p>14 A. It would have a bearing on our final 05:41</p> <p>15 analysis of whether they had the ability to 05:41</p> <p>16 honor their debt and it would continues as a 05:41</p> <p>17 going concern and therefore it could trigger 05:41</p> <p>18 the other than temporary impairment issue. 05:41</p> <p>19 Q. So it could be important to your 05:41</p> <p>20 other than temporary impairment analysis? 05:41</p> <p>21 A. Yes. 05:41</p> <p>22 Q. How about the analysis of whether 05:41</p> <p>23 the company had the intent and ability to holds 05:41</p> <p>24 it assets? 05:41</p> <p>25 A. Yes. 05:41</p>	<p>1 WOMACK ROUGH DRAFT</p> <p>2 Q. And why would it be important to 05:41</p> <p>3 that? 05:42</p> <p>4 A. Well, it is the basis for issuing of 05:42</p> <p>5 a going concern opinion for the company. And 05:42</p> <p>6 so this would be knowledge that we would want 05:42</p> <p>7 to know. 05:42</p> <p>8 Q. And if in fact the company had been 05:42</p> <p>9 late in meeting its margin calls and as I 05:42</p> <p>10 represented that gave the lender the right to 05:42</p> <p>11 immediately declare an event of default and 05:42</p> <p>12 there after sell collateral to protect itself, 05:42</p> <p>13 would you expect Mto tell Thornburg or excuse 05:42</p> <p>14 me would you expect Thornburg management to 05:42</p> <p>15 tell KPMG about that circumstance? 05:42</p> <p>16 MR. LEE: Objection to form. 05:42</p> <p>17 A. Yes. 05:42</p> <p>18 Q. And in your experience in your 42 05:42</p> <p>19 years of experience how would you management to 05:42</p> <p>20 tell its outside auditor that type of 05:42</p> <p>21 information? 05:42</p> <p>22 A. I would expect to get all the 05:42</p> <p>23 information that they are aware of that they 05:42</p> <p>24 would share with us especially in an area like 05:43</p> <p>25 this where it is a critical situation that we 05:43</p>
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<p>1 WOMACK ROUGH DRAFT</p> <p>2 would need to know everything that I know in 05:43</p> <p>3 order for us to make our final decision as to 05:43</p> <p>4 the type of report we would issue. 05:43</p> <p>5 Q. And are you familiar with the down 05:43</p> <p>6 to date meeting? 05:43</p> <p>7 A. Yes. 05:43</p> <p>8 Q. And can you tell us what that is? 05:43</p> <p>9 A. Well, it is an a discussion of 05:43</p> <p>10 subsequent events down to date of things that 05:43</p> <p>11 have happened to the company it is normally if 05:43</p> <p>12 you would have that discussion with the CFO and 05:43</p> <p>13 the president top people and would be asking 05:43</p> <p>14 questions about areas that such as you know, 05:43</p> <p>15 fulfillment of debt obligations or any issues 05:43</p> <p>16 that come up with asset impairment and 05:44</p> <p>17 litigation and a whole host of things like 05:44</p> <p>18 that. 05:44</p> <p>19 Q. And in f in fact the company had 05:44</p> <p>20 been in breach of lending agreements leading up 05:44</p> <p>21 to the filing of the 10-K, is that something 05:44</p> <p>22 that you as an auditor would expect management 05:44</p> <p>23 to tell you in a town to date meeting? 05:44</p> <p>24 MR. LEE: Objection. 05:44</p> <p>25 A. Absolutely. 05:44</p>	<p>1 WOMACK ROUGH DRAFT</p> <p>2 Q. You and spent extensive time 05:44</p> <p>3 testifying earlier today about that three-page 05:44</p> <p>4 document at pages 52 through 54 of I believe it 05:44</p> <p>5 is Exhibit 21 which had some information about 05:44</p> <p>6 the total amount of margin calls Thornburg had 05:44</p> <p>7 received leading up to the filing of the 10-K 05:44</p> <p>8 do you recall that? 05:44</p> <p>9 A. Yes. 05:44</p> <p>10 Q. Do you consider that document if 05:44</p> <p>11 provided to KPMG on February 27th to be 05:44</p> <p>12 adequate disclosure of the company's failure to 05:44</p> <p>13 meet margin calls in accordance with the terms 05:44</p> <p>14 of its repo agreements? 05:44</p> <p>15 MR. LEE: Objection, form. 05:44</p> <p>16 A. No. 05:44</p> <p>17 Q. Why not? 05:44</p> <p>18 A. Well, that of course I, I didn't see 05:45</p> <p>19 the document and I don't know exactly what to 05:45</p> <p>20 do with Inc. was work, with the document but I 05:45</p> <p>21 would expect that the client when they 05:45</p> <p>22 presented that document would say explain what 05:45</p> <p>23 is there and then tell everything they knew 05:45</p> <p>24 about any breaches in the problems they had 05:45</p> <p>25 honoring the margin calls and be very 05:45</p>